Mt. Clemens General Hospital *and* RN Staff Council, Office and Professional Employees' International Union, Local 40, AFL–CIO. Cases 7–CA–42498(1)(2), 7–CA–42690, and 7–CA–43149

August 23, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On November 15, 2000, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The Respondent filed limited exceptions and a supporting brief. The General Counsel, joined by the Union, filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order, as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Mt. Clemens General Hospital, Mt. Clemens, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order, as modified.

Substitute the following for paragraph 2(c):

"(c) Within 14 days after service by the Region, post at the facility in Mt. Clemens, Michigan, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or removed its presence from the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 8, 1999."

Dated, Washington, D.C. August 23, 2001

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MT. CLEMEN'S GENERAL HOSPITAL

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[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We note that the judge has in one instance misstated the testimony of registered nurse Marion Beaufait. Both the Respondent and the General Counsel agree that Beaufait testified that Clinical Manager McLaughlin directed her to remove the overtime protest button from her uniform and confiscated it as she stood at the nurses' station on October 8, 1999. The judge erroneously stated that this incident took place in the nurses' lounge. We find that this error has no effect on the judge's conclusion that the Respondent violated Sec. 8(a)(1) by enforcing an overly broad policy concerning the wearing of buttons. In adopting this finding that the prohibition against wearing protest buttons in patient care areas was unlawful, we find no need to rely on the judge's observation that the Respondent's Vice-President Michael Tonie never put in writing his reasons for speculating that the wearing of the protest button in patient care areas of the hospital could cause possible disruptions.

[2] The Respondent excepts only to the judge's findings and conclusions that it violated Sec. 8(a)(1) by requiring employees to remove the overtime protest buttons from nurses' uniforms, by confiscating the buttons, and by enforcing an overly broad prohibition of the wearing of insignia. There are no exceptions to any other aspect of the judge's decision.

Chairman Hurtgen agrees the Respondent's rule against the buttons was overly broad and was thus unlawful. See his concurrence in *Saia Motor Freight*, 333 NLRB No. 87. A hospital may enforce such a rule in patient care areas, provided that the employer makes it clear that it is enforcing the rule *because it is a patient care area*. In the instant case, the evidence indicates that Respondent enforced the rule, without reference to whether the area was a patient care area or not. In these circumstances, Chairman Hurtgen agrees that the application of the rule was unlawful.

[3] We shall modify the date in the contingent notice-mailing provision in the judge's recommended order in accord with *Excel Container*, 325 NLRB 17 (1997).

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Linda Rabin Hammell, Esq., and *Dynn Nick, Esq.*, for the General Counsel.
Scott A. Brooks, Esq., of Detroit, Michigan, for the Charging Party.
John P. Hancock, Jr., Esq., and *Michael F. Smith, Esq.*, of Detroit, Michigan, for the Respondent-Employer.

DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried before me on August 28, 29, and 30, 2000, in Detroit, Michigan, pursuant to a Third Amended Consolidated Complaint and Notice of Hearing (the complaint) issued by the Regional Director for Region 7 of the National Labor Relations Board (the Board) on July 13, 2000. The complaint, based on original and amended charges filed on various dates in 1999[1] and 2000, by RN Staff Council, Office and Professional Employees' International Union, Local 40, AFL–CIO (the Charging Party or Union) alleges that Mt. Clemens General Hospital (the Respondent or Hospital), has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

ISSUES

The complaint alleges that the Respondent discriminatorily required employees to remove union insignia from their uniforms, confiscated the insignia, and enforced an overly broad policy concerning such activity in violation of Section 8(a)(1) of the Act. Additionally, the complaint alleges violations of Section 8(a)(1) and (5) of the Act when the Respondent on June 4, and May 4, 2000, refused to furnish the Union with necessary and relevant information and bypassed the Union and dealt directly with bargaining unit employees when it distributed a survey regarding staffing and overtime issues and held an open door meeting.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel,[2] Charging Party, and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation engaged in the operation of a hospital providing in-patient and out-patient medical care, with a place of business located in Mt. Clemens, Michigan, where it annually derives gross revenues in excess of $250,000 and purchases and receives at its facility goods valued in excess of $50,000 directly from points outside the State of Michigan. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[1] All dates are in 1999 unless otherwise indicated.

[2] The General Counsel's unopposed motion to correct the Tr. dated October 10, 2000, is granted and received in evidence as GC Exh. 34.

II. ALLEGED UNFAIR LABOR PRACTICES

Background

Commencing in 1970, an independent union represented the full-time and regularly scheduled part-time registered nurses (RN's), contingent RN's, and graduate nurses with permits. In 1995, the independent union affiliated with the Charging Party and in April 1999, new Local 40 officers were voted into office. Since that time, the problems between the parties have escalated primarily because the incumbent union leadership has become more aggressive and vigilant in its defense of employee rights. The primary issue impacting the parties' relationship concerns staffing levels at the Hospital. The RN's assert that not enough full-time nurses are hired which forces incumbent staff to work inordinate amounts of forced overtime. The parties' bargaining relationship is governed by their current agreement that became effective on February 28, 1998, and expires by its terms on February 27, 2001 (GC Exh. 2). On December 21, 1998, the parties entered into a Letter of Understanding that addresses the topic of staffing and scheduling of RN's (GC Exh. 4). As part of the Letter of Understanding,[3] and in an effort to solve staffing shortages, the Hospital agreed to pay full-time and part-time RN's double-time for working hours that exceed their normal shifts. If other steps taken to alleviate the staff shortages prove unsuccessful, the Hospital retains the right to require an employee to stay in the interest of patient safety and work forced overtime. Additionally, the Letter of Understanding provides for recruitment and referral bonuses as a method to obtain new hires to increase staffing. That program and the entitlement to double-time payments was discontinued in accordance with its terms on June 23. With the ending of those programs, bargaining unit members were forced to work increased numbers of overtime hours.

At all material times, Priscilla Horde is the director of employee relations for Respondent, Peter Wozniak holds the position of vice president for patient care services, and Rhonda Forroro, Kevin McLaughlin, and Darlene Lamb serve as clinical managers. Representing the Union are Vickie Kasper, President, Gail Berndt, treasurer, and Jan Knowlton and Pam Reid holding the positions of chief steward and steward, respectively.

The RN's are required to wear ID badges on their uniforms while on duty in the Hospital. They often attach to their ID badges or wear on other parts of their uniform various insignia and buttons. Some of these buttons are supplied by the Hospital while others are the individual choices of the RN's.[4] The Hospital permits the RN's to wear these buttons, openly displayed on their uniforms, at all times and in all areas of the Hospital including patient care areas.

[3] This letter was incorporated into the parties' collective-bargaining agreement.

[4] Some of these buttons contained letters or statements thereon including CPR, ACL (advanced cardiac life support), seasonal buttons such as for Christmas or Halloween, sports memorabilia insignia, The Team Concept, Solidarity Forever, OPEIU Pro RN, Sisterhood Solidarity, Living Wage - Family Value, and A victory for One is a Victory for All (See GC Exh. 6 which depicts some of these buttons).

While on vacation in early October 1999, Union President Kasper was apprised that one of the RN's in the Family Birthing Center was forced to stay past her designated shift and work forced overtime. Since this problem has continued unabated and no resolution appeared imminent, Kasper directed that a button be created with a line drawn through the letters FOT representing a silent protest of "no forced overtime" (GC Exh. 6(b) and R. Exh. 16). Kasper authored an October 4 memorandum to all Hospital RN's explaining the background for the FOT button, and stated in part that, "This is your chance to quietly show management your support of your fellow nurse by giving a visual aid to your support" (GC Exh. 7). Approximately 72 FOT buttons were distributed by the Union to the intensive care RN's on October 8, and were placed in their cubby hole mailboxes located in the lounge area. Around 1 p.m. on October 8, Clinical Manager Kevin McLaughlin removed the FOT buttons from the cubby hole mailboxes. These buttons have not been returned to the Union. Between October 8 and November 2, various members of Respondent's supervisory staff instructed the RN's to remove the FOT button from their uniform and in a number of instances confiscated the buttons.

A. *The 8(a)(1) violations*

The General Counsel alleges in paragraph 9 of the complaint that agents of Respondent on or about October 8 and November 2, discriminatorily required employees to remove union insignia, from their uniforms, confiscated the insignia and enforced an overly broad policy concerning such activity.

The Respondent acknowledges that it permits the wearing of noncontroversial insignia on employee uniforms and has not sought the removal of such buttons while being worn by RN's in all areas of the hospital including patient care areas. On October 8, Director of Employee Relations Horde determined that the wearing of the FOT button by RN's was disruptive and could interfere with the welfare of patients or operations of the Hospital. Accordingly, she issued instructions to her managerial staff that the RN's could not wear the FOT button on their uniforms and directed McLaughlin to remove the FOT buttons from the RN's intensive care cubby hole mail boxes. Likewise, Horde directed members of the supervisory staff to instruct RN's that they could no longer wear the FOT button and they were to be removed from their uniforms.

Respondent defends its actions primarily on article 8, section 2 of the parties' contract.[5] It also argues that patients might ask questions about the FOT button that would force RN's to enter into a dialogue with the patients over the reasons that they were upset over the Hospital's regulation forcing them to work overtime. Additionally, Respondent contends the wearing of the FOT button is unprofessional and should not be considered as part of the RN's dress code.

In health care facilities, rules that contain restrictions of nonworking time solicitation outside immediate patient care area are presumptively invalid. *NLRB v Baptist Hospital,* 422 U.S. 773, 781 (1979). The presumption is also applicable to rules restricting the wearing of insignia outside immediate patient care areas. *London Memorial Hospital,* 238 NLRB 704, 708 fn. 11 (1978) (employer's claim of special circumstances rejected, where no evidence offered to show that patients were upset by button). See also, *Saint Vincent's Hospital,* 265 NLRB 38 (1982). An employer may rebut the presumption by demonstrating that the rule is "necessary to avoid disruption of health care operations or disturbance of patients." *Beth Israel Hospital v. NLRB,* 437 U.S. 483, 507 (1978).

The General Counsel's evidence is persuasive as it concerns the overly broad policy that requires employees to remove union insignia from their uniforms. In this regard, it is uncontroverted that the Respondent directed its supervisors to remove the FOT button from RN's at times while they were not in patient care areas. For example, Michael Schultz credibly testified that while he was in the emergency room nurse's lounge eating lunch, an area without patient contact, Manager Forroro confiscated his FOT button in addition to removing the FOT buttons of two other RN's. Likewise, Marion Beaufait testified that on October 8, while eating lunch in the intensive care lounge, she observed McLaughlin remove approximately 72 FOT buttons from the RN's mailboxes. Additionally, McLaughlin directed Beaufait to remove the FOT button from her uniform and give it to him while she was in the lounge area. This testimony is unrebutted as Forroro and McLaughlin did not testify in the proceeding. Lastly, both Berndt and Union Vice President Natlie Rewers credibly testified that on November 2, while at the nurse's station, Manager Darlene Lamb forced Berndt to remove the FOT button from her uniform, confiscated it, and stated it was not part of the dress code. Lamb did not testify in the proceeding. At no time prior to or after removing the FOT buttons from the RNs, did the Respondent either orally or in writing clarify where the FOT button could be worn or not worn in the hospital. For example, it did not indicate that the FOT button could be worn in the employee lounges, the cafeteria, lobbies or in any area other then patient care areas. Under these circumstances, I conclude that as alleged by the General Counsel in paragraph 9 of the complaint, the Respondent enforced an overly broad policy concerning the wearing of the FOT buttons by RN's and therefore, violated Section 8(a)(1) of the Act. See, *St. Luke's Hospital,* 314 NLRB 434, 435 (1994). Likewise, by confiscating the FOT buttons from the mailboxes and removing them from the uniforms of the RNs, the Respondent also violated Section 8(a)(1) of the Act.

In regard to the Respondent's prohibition of wearing the FOT button in hospital patient care areas, under Board precedent, such a position is normally presumptively valid. However, in the particular circumstances of this case, I conclude otherwise for the following reasons.

First, the Respondent did not prohibit the wearing of any other insignia or union buttons in all areas of the hospital in-

[5] The Union recognizes that procedures have been provided in this Agreement for the equitable settlement of grievances. Therefore, the Union and its members agree that neither will call, engage in, participate in, or sanction any strike, sympathy strike, stoppage of work, picketing of the Hospital, sit-down, sit-in, boycott, or interfere with the conduct of the Hospital's service for any reason whatsoever nor engage in any other activities that may disturb or interfere with the welfare of patients or operations of the Hospital.

cluding patient care areas. Testimony of union witnesses Rewers, Kasper, and Berndt in addition to Respondent witness Horde confirms this. Second, while Respondent Vice President of Medical Affairs Dr. Michael Tonie testified that the wearing of the FOT button in patient care areas of the hospital could cause possible disruptions, he never put his reasons for such speculation in writing. Likewise, he did not know of any complaints from patients or their families that the wearing of the FOT button was disruptive or caused a dialogue to take place with the RN's. Moreover, Dr. Tonie admitted that no hospital administrator made an official report that the wearing of the FOT button caused any disruption or interfered with patient care or safety. Indeed, he grudgingly admitted that some of the union buttons depicted in GC Exh. 6(a), could be construed as controversial not unlike the FOT button. Third, Horde admitted that the wearing of the FOT button did not cause a work stoppage or sit-down strike and she did not have any evidence that the RN's discussed the FOT button with patients. Likewise, she acknowledged that the Respondent did not conduct a survey or make any inquiries of patients or their families that the wearing of the FOT button interfered with patient care or safety.

For all of the above reasons, I find that when the Respondent prohibited the wearing of the FOT button in patient care areas, it violated Section 8(a)(1) of the Act. *London Memorial Hospital, supra.*

B. The 8(a)(1) and (5) violations

1. Requests for information

(a) The June 4 request

The General Counsel alleges in paragraph 10 of the complaint that the Union, by letter, requested that Respondent furnish it, with copies of any "RN Staff Council Local 40 Registration Form(s)" in its possession since January 1.

Berndt authored the June 4 letter since she did not have all of the dues-checkoff information to do her job as treasurer of the Union (GC Exh. 22). In the first paragraph of the letter, the Union sought the employment status, pay scale, and addresses for eight employees. Berndt testified that the Respondent provided the information on August 2. With respect to the third paragraph of the letter, Berndt sought information why no initiation dues were deducted from two new hires. On August 2, the Union received the information regarding this request.

The central issue in paragraph 10 of the complaint concerns the second paragraph of the June 4 letter.[6] Berndt testified that when the June 4 information request was made, she was under the impression that the hospital was using a three part dues-authorization form, with one copy being sent to the Union (GC Exh. 20(b)). On June 18, the Union filed a grievance concerning the refusal of the Respondent to provide dues authorization forms (R. Exh. 17), and a second step grievance meeting took place on July 9, between Horde, Kasper, Rewers and Knowlton.[7] During the July 9 meeting, Horde credibly testified that she apprised the union representatives that the Hospital did not have and was not currently using a three part dues-authorization form. Horde explained that the Hospital was using a two part dues-authorization form (GC Exh. 20(a)), with one copy going to the employee and the other copy being sent to payroll. Accordingly, there was no union copy that could be provided. In order to be responsive to the Union's June 4 information request, since the Hospital could not produce a form that did not exist, Horde provided a seniority roster, a change of status form, and a remittance form from payroll showing who was paying union dues. Horde suggested that the Union could extrapolate the information from the three forms and discern which employees were on dues checkoff and paying dues to the Union. Likewise, at the July 9 meeting, Horde showed the recruitment package to the Union that was given to new hires and contained a two part dues-authorization form with no union copy. Horde credibly testified that she asked the union representatives at that meeting whether she should pull the 470 dues authorization cards from the individual RN's files, and was informed no. It was not until sometime in February 2000, that the Union revised and provided a three part dues-authorization form to Respondent that did include a union copy. Thereafter, in May 2000, the Union again revised the dues authorization form to now include four parts, with one of the copies going to the Union (R. Exh. 20).

On December 28, the Union wrote another letter to Horde contending that they still had not received the dues information requested in the second paragraph of the June 4 letter (R. Exh. 5). In January 2000, Horde convened a meeting with the Union to address that issue. Once again Horde explained to the Union that the hospital did not presently use a three part dues-authorization form and showed the Union a copy of the two part form it was then using for new hires.

The obligation under Section 8(a)(1) and (5) of the Act on the part of an employer to supply the statutory bargaining agent with relevant information concerning the processing of grievances and contract negotiations is well and long established. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956); *Shoppers Food Warehouse*, 315 NLRB 258 (1994). Unreasonable delay in furnishing such information is as much a violation of the Act as a refusal to furnish any information at all. *Bundy Corp.*, 292 NLRB 671 (1989) (violation of Act to ignore or delay supplying the Union with necessary information for 2–1/2 months).

Based on the forgoing, I do not find that the Respondent refused to provide the information that the Union had requested on June 4. In this regard, as it concerns the first and third paragraphs of the June 4 letter, Berndt testified that the Union received the information it had requested on August 2. With respect to the second paragraph of the letter, I conclude that the Respondent at the time of the request, did not have nor did it presently use a dues authorization form that had a third copy and could have been provided to the Union. At the time the Union made the June 4 request, Berndt mistakenly was under

[6] It states, "I am also requesting that the unions copy of the initiation dues cards filled out by all the employees you have hired from the beginning of the year to date, be forwarded to us. We have received only a few, and I have quite a long list of new employees."

[7] The grievance alleges that since June 4, the hospital did not provide information in violation of article 3, section 5 and article 9, section 7 of the parties' collective-bargaining agreement.

the impression that such a form existed that could have been provided to the Union. Since the evidence establishes that such a form did not exist when the information request was made, I cannot find that the Respondent violated the Act as alleged. Moreover, I find that the Respondent made a good-faith effort to satisfy the dues card portion of the June 4 information request, when it informed the Union that the three forms provided to it on a routine basis could be used to discern the information. Additionally, I credit Horde's testimony that she inquired of the union representatives at the July 9 grievance meeting, whether they wanted her to individually go through each of the RN's personnel files to locate and Xerox the dues authorization cards. As the Union decided this was not necessary, I conclude that the Respondent took all necessary steps to satisfy the Union's request for the dues authorization forms. I find that Horde's testimony on this point stands unrebutted as Knowlton did not testify at the hearing, Rewers did not address the meeting during her testimony, and Kasper grudgingly admitted on cross-examination in the rebuttal phase of the case that she does not remember being at the July 9 meeting. Accordingly, I recommend that paragraph 13 of the complaint be dismissed.

(b) The May 4, 2000 request

The General Counsel alleges in paragraph 14 of the complaint that the Respondent, by its inaction and delay has failed and refused to timely furnish the Union with information it requested on May 4, 2000.

The Respondent opines that since the request was voluminous and a good portion of the information did not exist at the facility, it was not unreasonable to take approximately 3 months to respond to and provide the Union with the requested information.

On May 4, 2000, Kasper authored a letter seeking various items of information (GC Exh. 27). In part, she sought information on the amount of money that Respondent was spending on the employment of contract and outside agency nurses in order to determine if it was more cost effective to employ these individuals rather then increase the hiring of full-time or regular part-time RN's. The subject of these outside hires is contained in the parties' collective-bargaining agreement. The Union requested that the information be provided within 14 days but indicated that in the event that the Respondent was unable to meet the deadline, it sought any information that was readily available and requested that an anticipated date be selected for providing the remaining information. It also apprised the Respondent that if it did not understand any of the requests for information, to contact the Union immediately so a meeting could be scheduled to discuss and clear up any confusion.

The Respondent, by memorandum dated July 6, 2000, apprised the Union that the request is rather broad and it is taking some time to retrieve the information (GC Exh. 28). The Respondent directed the Union to explain the relevancy of the documents requested before it would go to the considerable time and trouble of compiling them. By letter dated July 16, 2000, the Union responded to this request (GC Exh. 29). It stated that it provided adequate reasons in the May 4, 2000 letter, and reiterated that the information was necessary to support grievances previously filed,[8] to monitor compliance with the parties' agreement, and to prepare for proposed changes in contract language for upcoming negotiations.

Shortly after receipt of the Union's May 4, 2000 letter, Horde met with a union representative. She acknowledged the request, but indicated that because the Union had other requests for information on file and that much of the present information must be obtained from outside sources, it would be difficult to obtain the information in a prompt fashion. Horde testified that while she did not put these concerns in writing, she met with the Union on a monthly basis and continued to apprise the Union of the difficulty in obtaining the requested information.

It is axiomatic that information that is presumptively relevant must be turned over to an exclusive representative in a timely fashion. I am not convinced, in the particular circumstances of this case, that the Respondent provided all of the requested information to the Union or provided it in a timely manner. In this regard, the first six items of information deal with outside agencies or business contract suppliers of nurses. While it might take some additional time to supply this information, at least one of these outside suppliers, Personal Home Care was owned and operated by the hospital. Thus, as it related to this supplier, there is no reason why the information could not have been supplied to the Union in a period less then 3 months. Regarding Item 6 (training), Item 7 (EA time), Item 9 (budgets), Item 10 (Hospital minutes referencing costs), and Item 12 (staffing needs lists), Horde admitted that this information was in the exclusive control of the Hospital and no outside source was necessary to compile the information. Moreover, I note that a number of these topics for which information was sought are covered in the parties' collective-bargaining agreement. Horde testified that the hospital responded to the Union on August 17 (GC Exh. 30) and August 29 (R. Exh. 4), and provided the majority of the information. Horde acknowledges, however, that the Hospital did not provide the Union with the addresses and telephone numbers or whether it has ownership interests in any outside agency other than Personal Home Care, and has not provided the information sought in Items 7 and 12.

Under these circumstances, I find that the Respondent did not provide all of the information requested by the Union in its May 4, 2000 request. Additionally, I find that although the Respondent did provide the Union certain information on August 17 and 29, it was not done so in a timely manner. Lastly, I find when the Respondent instructed the Union to explain the relevancy of documents that were requested, when the majority of the information sought was presumptively relevant and in most instances covered in the parties' collective-bargaining agreement, it also violated the Act.

In summary, I find that the Respondent violated Section 8(a)(1) and (5) of the Act when it did not provide necessary and relevant information to the Union and did not do so in a timely manner.

[8] Kasper credibly testified that as of May 4, 2000, there were a number of pending grievances on the use of agency nurses and their impact on incumbent RN's.

2. The Survey

The General Counsel alleges in paragraph 15 of the complaint that the Respondent bypassed the Union and dealt directly with unit employees by distributing a survey regarding staffing and overtime issues.

The Respondent argues that the Union gave it permission to distribute the survey and in any event, the underlying survey items were nonbargainable subjects and covered under the management rights section in the parties' collective-bargaining agreement.

On October 13, a meeting took place between Respondent representatives Wozniak and Denise Wojwoda and union officials Reid and Knowlton to discuss staffing needs in the Family Birthing Center. During the course of the meeting, Knowlton suggested that the Hospital should obtain the input directly from the impacted RN's to assist in resolving the problem of forced overtime.[9] Sometime in early November 1999, Wojwoda spoke with Reid about coming to a meeting with the RN's in the Family Birthing Center to discuss staffing needs. Reid declined to come to the meeting but never told Wojwoda that the meeting could not take place or that she could not have discussions with the staff. Prior to the meeting on November 10, Wojwoda sent Reid an invitation to attend. During the November 10 regularly scheduled staff meeting, one of the RN's suggested that a survey be sent to members of the Family Birthing Center inquiring about different options to help alleviate the staffing problems in the section and cut back on forced overtime. Accordingly on November 12 or 13, Wojwoda distributed a cover letter and survey to the RN's in the Family Birthing Center (GC Exh. 15). The survey was voluntary and no one was required to respond. She received seven responses to the survey out of the 12 to 15 RN's in the section; however, it was decided that no changes would be made to the present method of staffing the Family Birthing Center.

There is no dispute that, prior to the time the survey was conducted among the RN's in the Family Birthing Center, the Respondent had experienced serious difficulties in staffing the shifts in that department. The parties' collective-bargaining agreement at article 2, section 2, gives the hospital exclusive authority in direction of the work force and managing the hospital including establishing shifts. The employee survey was designed to collect information to enable the Respondent to determine if the Family Birthing Center RN's wanted to make changes in their schedules on a nonmandatory basis. I note that Knowlton suggested that the Respondent meet with the RNs in the Family Birthing Center to discern if the problem could be resolved. Additionally, Reid declined an invitation to the November 10 meeting when one of the RNs suggested that Respondent distribute a survey to employees in the Unit.

Considering all the circumstances, especially that the contract gives the Respondent the right to make shift changes as necessary to provide patient care and that the survey was conducted during the contract term when no negotiations were contemplated or ongoing, I find that the Respondent did not violate the Act when it issued a survey to Family Birthing Center employees. *East Tennessee Baptist Hospital*, 304 NLRB 872 (1991). Accordingly, I recommend that paragraph 15 of the complaint be dismissed.

3. The open door meeting

The General Counsel alleges in paragraph 16 of the complaint that about January 1, 2000, Wozniak bypassed the Union and dealt directly with unit employees by issuing an invitation to employees to attend an open door meeting.

The Respondent acknowledges that two open door meetings were held with employees in the Family Birthing Center. It asserts, however, that it has conducted numerous meetings of this nature in the past and in any event, it did not address any subjects that would be subject to negotiations with the Union. In the one instance when a question was asked about staffing, Wozniak referred the individual to their section manager and the Union.

At one of the regularly scheduled lunches that Wozniak held with hospital staff in his capacity of vice president of patient care services, a RN suggested that he should make himself available to answer questions or concerns of the RN's in the Family Birthing Center. Accordingly, Wozniak decided to hold two open door meetings on January 12 and 14, 2000, for one employee or groups of staff to meet and address any issues or ask any questions they might have. Both meetings took place with approximately 20 employees attending the nonmandatory meetings. Wozniak credibly testified that no derogatory comments were made about the Union and no terms and conditions of employment were addressed. In the one instance where a RN asked a question about staffing, Wozniak referred the individual to her section manager and the Union. The majority of the comments expressed by RN's who attended the meetings concerned positive feelings about their job and the management style of the Family Birthing Center Director.

The General Counsel did not call as witnesses any of the RN's who attended the open door meetings and therefore, the testimony of Wozniak stands unrebutted.

Under these circumstances, I credit Wozniak's testimony that no derogatory remarks were made about the Union in either meeting and he made it very clear that any issues that were appropriate for discussion with the Union should be referred and he did not intend to discuss them at the meetings. Moreover, I note Kasper's admission that at the time of the open door meetings no negotiations were ongoing with the Union. Additionally, Kasper acknowledged that the Hospital has held at least 30–40 meetings of this nature. Employees that attend such meetings, including the subject open door meeting, are not all members of the bargaining unit.

For all of the above reasons, and particularly noting that the General Counsel did not present any witnesses to sustain the allegations in paragraph 16 of the complaint, I recommend that the allegations concerning bypass and direct dealing with employees in reference to the open door meetings be dismissed.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[9] Knowlton was the chief steward of the Union on that date. Indeed, Knowlton's suggestion to obtain input from the RN's, came before Kasper's letter of October 17 (CP Exh. 1-recognition of Union representatives) and the resignation of Knowlton on October 24 (CP Exh. 2).

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by discriminatorily requiring employees to remove union insignia from their uniforms, confiscating the insignia and enforcing an overly broad policy concerning such activity.

4. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by refusing to furnish and delaying in providing requested information relevant to the Union's performance of its duties as exclusive collective-bargaining representative.

5. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, Mt. Clemens General Hospital, Mt. Clemens, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Forcing employees to remove union insignia from their uniforms.

(b) Confiscating union insignia.

(c) Maintaining an overly broad policy concerning the wearing of union insignia.

(d) Refusing to timely respond and provide the Union with requested information relevant to the Union's performance of its collective-bargaining duties as the exclusive representative of an appropriate unit of Respondent's employees.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Return any union insignia or buttons to the Union confiscated in October and November 1999, and revoke any policy forbidding the wearing of these buttons.

(b) Furnish to the Union in a timely fashion the information it requested on May 4, 2000.

(c) Within 14 days after service by the Region, post at its facility in Mt. Clemens, Michigan copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 4, 1999.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. November 15, 2000

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discriminatorily require employees to remove union insignia or buttons from their uniforms or confiscate the insignia.

WE WILL NOT maintain an overly broad policy concerning the wearing of union buttons.

WE WILL NOT refuse to provide the Union with requested information relevant to the Union's performance of its collective-bargaining duties as your exclusive-bargaining representative.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the Union in a timely manner information requested that is relevant to the Union's performance of its collective-bargaining duties as the exclusive-bargaining representative of an appropriate unit of our employees.

MT. CLEMENS GENERAL HOSPITAL

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."